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IN THE

Supreme Court of the United States

October Term, 1952.

No. 214.

In the Matter of

BRIGANTINE BEACH HOTEL CORPORATION,
Petitioner.

On Petition for Writ of Certiorari to the United States Court of Appeals for the 3rd Circuit.

BRIEF OF RESPONDENT CONTRA PETITION FOR CERTIORARI.

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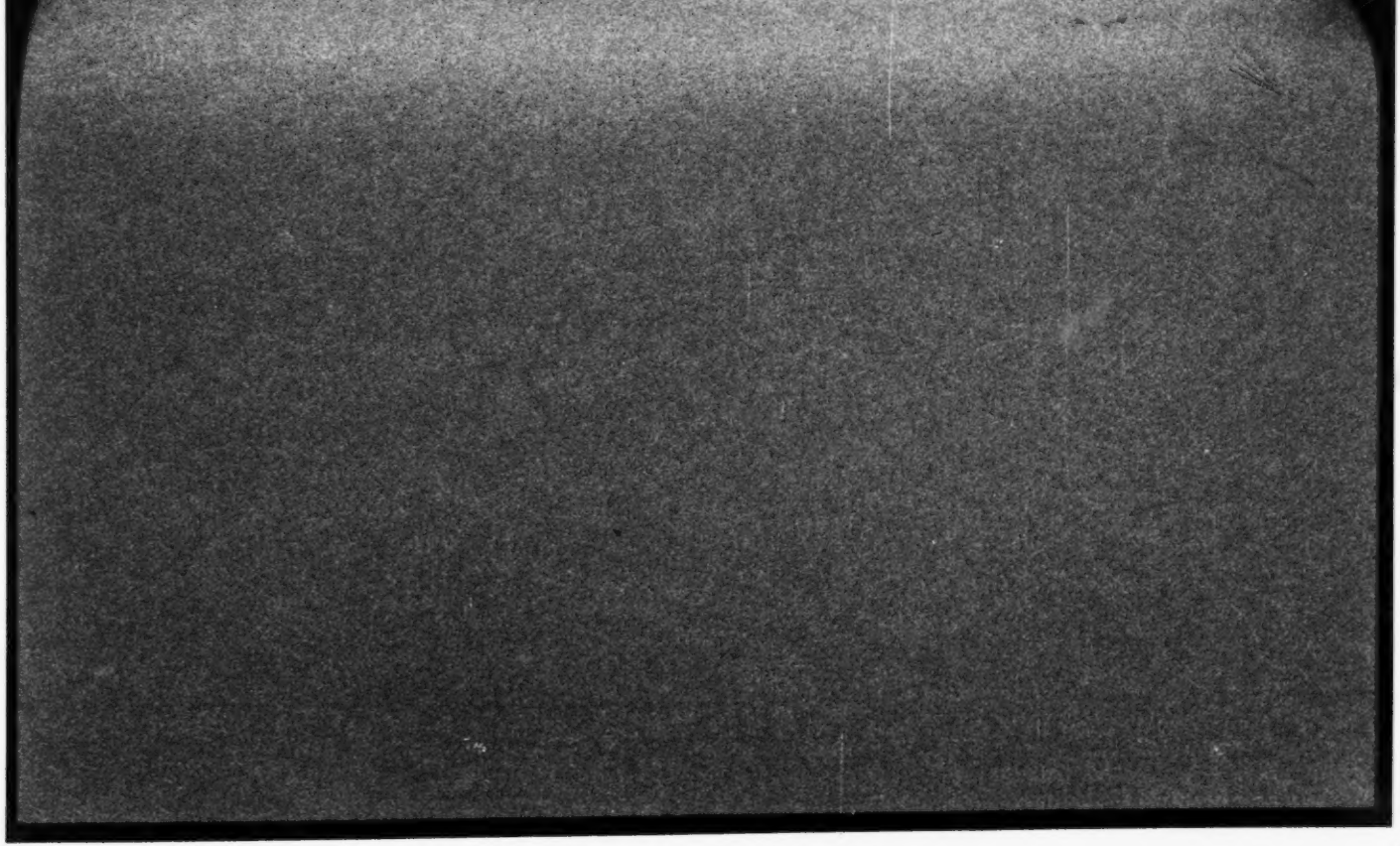

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To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

On behalf of the creditors of above petitioner, the following answer is made to the application for a writ of certiorari herein:

The Summary Statement of Facts, submitted by petitioner, is in the main correct. It is supplemented hereafter.

The matter now submitted by petitioner for this Court's attention, is trivial, of small moment, and has been amply treated in the District Court and in the Court of Appeals, both as to law and fact. The law governing this matter is basic and well settled; there are no conflicts, and no clarification is required.

It is therefore urged that the application be denied.

SUPPLEMENTAL STATEMENT OF FACTS

On November 13, 1950, Brigantine Beach Hotel Corporation (hereinafter referred to as debtor) conveyed away all of its property and assets to Equity Corporation (which like debtor was wholly owned by one Josephson); and on December 1, 1950, Morris Bloom, attorney for creditors, filed a complaint in the New Jersey Superior Court, praying that such conveyance be adjudged in fraud of creditors, and made without consideration, that a re-conveyance be decreed, that debtor be declared insolvent and a receiver be appointed.

Both debtor and Equity Corporation appeared in response to that complaint, and offered to re-convey. This offer was adopted by judgment of the Court, which also appointed a custodial receiver; on final hearing held January 26th, 1951, the receivership was made permanent upon a finding that debtor was insolvent, and on that same day debtor filed its petition for an arrangement under Chapter XI of the Bankruptcy Act, in the United States District Court for the District of New Jersey, where a federal receiver was appointed.

The District Court, in its order of October 5, 1951, made award of fees and costs with respect to eight items, six of which have not been challenged; only the award to the receiver, and to Morris Bloom, attorney for the creditors in the proceedings before the New Jersey Superior Court, and later in the District Court, have ever been attacked, and a review sought.

Debtor failed or refused to comply with the remainder of the order of October 5, 1951, so far as it related to the deposit by it of the sum of $9,291.45, necessary to provide payment of the installment due to creditors and of the costs due under debtor's Plan of Arrangements; and for other valid reasons which appear in the order of the District Court made November 29th, 1951, the Court refused confirmation of debtor's Plan, adjudged debtor a bankrupt and directed that bankruptcy be proceeded with.

Exception being taken by debtor to all three orders of the District Court, appeals were taken in all these matters to the Court of Appeals, Third Circuit, where these matters were all argued together, and disposed of; and an application for a rehearing denied.

QUESTION PRESENTED.

The question involved is whether, in proceedings under U. S. C. A. Title 11, sections 701-799, where an insolvent debtor offers a plan of arrangement with its creditors and then fails or refuses to deposit the funds required thereunder, taking exception to the Court allowance of fees to the Receiver and to the attorney for creditors and appealing therefrom, does the taking of such a limited appeal from an administrative step in the proceedings stay and thereby paralyze the entire and further administration of the estate, no stay being applied for, no offer made to deposit funds to cover the uncontested allowances, and no offer being made to give security for the payment of the allowances in contest, should such contest prove unavailing.

ARGUMENT.

(1) In arrangement proceedings, the Court has exclusive jurisdiction of debtor and its property (section 711) and may appoint a receiver (section 732) and appraisers (section 733) and determine the amount of money necessary to pay the costs and expenses of the proceedings (section 737). There is therefore little doubt as to the right of the District Court to treat of these matters, and to reduce its conclusions to judgment.

(2) A review of these decrees is provided for in U. S. C. A. Title 11, section 47, but these matters are mere steps in the ordinary administration of the estate, administrative in character, and are treated in petition to superintend and revise. They are not strictly "appeals."

City of Fort Lauderdale v. Freeman, 5th Circuit 197 Fed. 2nd 122;
In re Christ's Church of the Golden Rule, 9th Circuit, 172 Fed. 2nd 523;
Universal Oil Products Co. v. Cosden Petroleum Corp., 5th Circuit, 178 Fed. 2nd 495;
Harold Taylor, Trustee, v. Harry W. Voss, Trustee, 271 U. S. 176.

(3) The Bankruptcy Act does not contemplate tying up an estate and prolonging administration by appeals.

Hoehn v. McIntosh, 110 Fed. 2nd 199.

And an appeal on a question of fees does not thereby remove to the Appellate Court the entire cause.

Fernow v. Liberty Royalties Corp., 10th Circuit, 146 Fed. 2nd 396;
In re Woodruff, 9th Circuit, 121 Fed. 2nd 152, cert. denied 314 U. S. 652.

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